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10/696,181

10/29/2003

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23556

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03/04/2008

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EXAMINER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/696,181  
Filing Date: October 29, 2003  
Appellant(s): PEREZ ET AL.

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Tim F. Williams  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 5, 2007 appealing from the Office action mailed February 12, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,431,643	OUELLETTE ET AL.	7-1995
4,846,813	RALEY	7-1989

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 27 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouellette et al. (US 5,431,643) and further in view of Raley (US 4,846,813).

With respect to claims 27 – 30, 32 and 34, Ouellette et al. (hereinafter “Ouellette”) discloses an absorbent article, comprising: a cover layer (28) comprising a user contacting surface and a non-contacting surface, a bottom layer and an absorbent layer disposed therebetween (col. 2, lines 35 – 39) wherein the user contacting surface and a non-contacting surface have an ink indicia imprinted thereon (col. 5, lines 42 – 44) with surfactant (col. 5, line 18 to col. 6, line 57) and/or a botanical extract. The cover layer also includes one or more apertures as taught in col. 2, lines 49 – 50.

The difference between Ouellette and claim 1 is the provision that the apertures have a tapered opening.

Raley teaches a topsheet that includes apertures with a tapered opening as set forth in figure 2.

It would have been obvious to one of ordinary skill in the art to modify the apertures of Ouellette to provide apertures with tapered openings because apertures with tapered openings will allow for more effective acceptance and retention of liquids as taught by Raley in the abstract.

With reference to claim 31, Ouellette discloses an absorbent article that comprises a cover material that is apertured by a method of vacuum aperturing, pin aperturing, hydroentanglement, ultrasonic and a combination thereof as set forth in col. 4, line 66 to col. 5, line 6.

As to claim 33, Ouellette discloses an absorbent article wherein the indicia comprises a color that contrasts with the cover layer so as to make the indicia visually apparent to the user of the article as set forth in col. 2, lines 39 – 48.

As to claim 35, Ouellette discloses an absorbent article wherein the indicia comprises an ink that has a second surfactant as set forth in col. 6, lines 33 – 36.

The difference between Ouellette and claim 35 is the provision that the surfactants are present in a specific amount.

It would have been obvious to one of ordinary skill in the art to modify the amount of surfactant in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range is within the level of ordinary skill in the art.

As to claim 36, Ouellette discloses an absorbent article wherein the cover layer comprises a polyolefin as set forth in col. 4, lines 67 – 65.

The difference between Ouellette and claim 37 is the provision that the apertured cover layer has a specific open area.

The examiner contends that one may consider any one up to and including all apertures in order to meet the claimed limitations.

Alternatively, it would have been obvious to one of ordinary skill in the art to modify the amount of open area in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range is within the level of ordinary skill in the art.

Regarding claim 38, Ouellette discloses a cover layer that includes cotton as set forth in col. 4, lines 57 – 65.

As to claim 39, Ouellette discloses an embossed cover layer as set forth in col. 5, lines 14 – 17.

A macroembossed material may be considered a relative term and is not considered a patentable distinction based on the face that embossing is taught by the prior art of record.

Regarding claim 40, Ouellette discloses an article wherein the cover layer is bonded to an under layer selected from the listed group as set forth in col. 6, line 67 to col. 7, line 6.

With reference to claim 41, Ouellette discloses an article that may include a variety of additional layers as set forth in col.7, lines 32 – 37. The incorporated references include the use of a dual topsheet, which as taught by Ouellette, may be

treated with a surfactant. Likewise, the acquisition layer that Ouellette discloses as being usable with the article is well known in the art to be capable of being treated with a surfactant for increased and more efficient absorption.

#### **(10) Response to Argument**

In response to the argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Ouellette seeks to provide a structure that will be both clean and dry after bodily fluids have been deposited thereon (abstract). In order to accomplish this, Ouellette utilizes an apertured (col. 5, line 4) topsheet, which has pervious and impervious areas as set forth in col. 5, lines 37 – 41. The apertures naturally facilitate the transfer of fluid from the cover layer to the underlying structure. Similarly, Raley seeks to provide an improved fluid absorbent article (col. 4, lines 1 - 4) utilizing an apertured topsheet that quickly and efficiently absorbs fluids (col. 1, lines 10 – 15). The tapered apertures of Raley allow for more effective acceptance and retention of liquids as a result of the increased open area which Raley recognizes as being adjustable as desired (col. 6, lines 60 - 66) which is in line with ultimately providing a structure that is both clean and dry after bodily fluids

have been deposited thereon. Therefore, the motivation to combine the references can be found in both the references themselves and in the knowledge generally available to one of ordinary skill in the art. The fact that appellant may have recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.

Likewise, appellant's statement that the tapered apertures of Raley restrict fluid flow is contradictory to the teachings of the invention as a whole. The restriction of fluid flow would result in an article prone to undesirable leakage and pooling of fluids next to the skin leaving the wearer with constant cold and/or wet sensations. This situation is one that the absorbent article art as a whole seeks to avoid.

Regarding appellant's statement that the references fail to teach indicia on a non-contacting surface, the examiner disagrees. Ouellette discloses that the fluid impervious areas are made of ink (col. 5, lines 23 – 24). Ouellette also discloses these fluid impervious areas should be at (user contacting surface) or below (non-contacting surface) the uppermost plane of fibers of which the topsheet is comprised as set forth in col. 5, lines 42 – 44 and col. 5, line 66 to col. 6, line 2.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.



Respectfully submitted,

/Michele Kidwell/

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Supervisory Patent Examiner, Art Unit 3761